

**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: Anderly, Conneely, Gaber, Koonze, Looney, Patenaude

General Public Present: Approximately 25

PUBLIC COMMENT

There were no public comments. Chairperson Bogue announced that Item 4 was continued until May 29 so if anyone wanted to speak to that item, they could do so at this point. There was no response.

AGENDA

1. Tentative Parcel Map 8137 Including Variances to Property Widths - Khalid Mayar (Owner) - Request to Subdivide a Parcel, Approximately 21,282 \pm Square-Feet, into Four Residential Parcels, Each Approximately 4,000 Square Feet and to Allow a Variance for the Reduction of Average Lot Widths - The Project is Located on Chance Street
2. Appeal of the Planning Director's Denial of Variance No. PL-2003-0093 - Ralph Willkom (Applicant/Owner) - Request for a Variance to Allow a Garage With a 15-Foot Setback Where a 20-Foot Setback is Required - The Project is Located at 25158 Soto Road at the Northeast Corner of Soto Road and Frederic Avenue
3. Modification of UP 00-160-14 - Planning Director (Applicant) - Use Permit Application for the Construction of a 2,476 Square-Foot Restaurant with a Drive-Thru Window and the Appeal of Planning Director's Denial of PL-2002-0172 - By the Bay Investments (Applicant) - Use Permit Application to Allow Required Parking on an Adjacent Parcel - The Project is Located at 28000 Mission Boulevard at Webster Street (Big "O" Tires, Inc./Owners)
4. Phase II, Grand Terrace, PL 2003-0114 - Pulte Homes Corporation (Applicant); Donald Clemerson (Owner)

- a. Use Permit – Request to raze two commercial/industrial structures and construct multi-family residential units within the Central City – Commercial (CC-C) Sub-district
- b. Site Plan Review – Regarding the design of project
- c. Exception – To allow a reduction in the garage width for one of two garage parking spaces
- d. Vesting Tentative Map Tract 7440 – Request to subdivide a 3.58-acre site into 74 lots for the development of 74 townhouses and one parcel for common open space

The property is located at the eastern terminus of Dean Street, west of the Western Pacific Railroad, north of Jackson Street, and south of D Street
(This item is to be continued to May 29, 2003)

PUBLIC HEARING

1. Tentative Parcel Map 8137 Including Variances to Property Widths – Khalid Mayar (Owner) – Request to Subdivide a Parcel, Approximately 21,282 ± Square-Feet, into Four Residential Parcels, Each Approximately 4,000 Square Feet and to Allow a Variance for the Reduction of Average Lot Widths – The Project is Located on Chance Street

Development Review Engineer Gaber described the property, location and the proposal. The proposed development would continue Chance Street through the property, connecting both the north and south portions. He commented that the variance request is consistent with other homes in the area. He noted that the tree on the property would remain. Staff has agreed that no site plan review would be necessary. A public meeting was held in April at which neighbors requested that Chance Street not be extended through the site. Staff decided it is necessary to extend the street and determined that more through traffic would not be encouraged. Connecting the street would promote walking and biking throughout the neighborhood. He added that the Fire Department recommended opening up the street as a safety factor.

Chairperson Bogue opened the public hearing at 7:40 p.m.

Gloria Khalil said she opposed the extension of Chance Street. She likes the safety of having a dead-end for the street. She said the firefighters have never had a problem getting through the neighborhood.

Mostafa Khalil made the point that fire trucks can access either side of the homes. Emergency vehicles can go through. Should not be difficult to do nor be an issue. Should be a compromise.



Deborah Thomas said she lives on the dead end on the south side. She said she likes that the neighbors know each other. Their children can play together and neighbor's watch out for each other.

David Ruffin, architect for the project, said what they might do is propose a cul-de-sac at the end of the street. He said they could do either the cul-de-sac or the cut-through for the street.

Planning Manager Anderly explained it would create a cul-de-sac on one side but the street would still be truncated at the other end.

Christina Perez said they oppose the opening of their street because the value of houses will go down. She said when they bought their homes, they did not know about that this street would be opened.

Commissioner Halliday asked Development Review Engineer Gaber in what form it was stated that the street would be open.

Development Review Engineer Gaber said that the street was shown as an open street in the subdivision maps. The street currently ends as a cul-de-sac at Industrial.

Ms. Perez said before buying their home she specifically asked the builder if it would remain a cul-de-sac. They were told it would be.

In response to a question from a commissioner about the City of Hayward's liability in opening up a street sold as a cul-de-sac, Assistant City Attorney Conneely said that real estate transactions are private so there should be no liability for the City of Hayward.

Lin Ortega said she also opposes the opening of Chance Street. They purchased their homes based on the fact that it was a cul-de-sac. She noted that it is much safer for children to have the block closed off for safety. He asked if safety was not an issue back then, why is it now, and have they been living on an unsafe street.

Melanie Ortega said she too was opposed the opening of the cul-de-sac. She remembered asking the builder if the street would open. He said no. Now, Development Review Engineer Gaber is telling them that the City map indicates it is an open street. She noted that this seems to be for the builders' convenience, not their safety. She said that for the safety of their children, they really don't want it to be opened up.

Percy Clark said he too was opposed to continuing Chance Street. He said he lives on the north side and appreciates it as a cul-de-sac. They get to know their neighbors better. There is very little traffic at this point. He said he liked to keep the uniqueness of the neighborhood.

The public hearing was closed at 8:03 p.m.

Chairperson Bogue asked why the City map would show the parcel as a through street.

Development Review Engineer Gaber said the City of Hayward had no ability to make the condemnation happen when both developers develop on either side. He used the example of State Street, which will also be extended when the time comes. He added that as the parcels develop, that's when it happens.

Commissioner Caveglia stated that this is a different developer from those properties developed both north and south of Chance Street. It is also another piece of property. He explained that clearly there is no way around it. The developer has a right to do make the extension. He moved, seconded by Commissioner Zermeño, to approve the staff recommendation.

Commissioner Zermeño said it is unfortunate if these homebuyers were misled by the developer. He noted that it is not an actual cul-de-sac. He agreed with the Fire Department, if the need arises, they need the access for safety reasons.

Commissioner Sacks also agreed with the Fire Department. She commented that the residents did not seem to be aware that the Fire Department had asked for the street extension. She then discussed a petition with signatures of residents supporting making Chance a through street. She said when she visited the area, she was disturbed by children's toys in the street. She then added that she lived on a street similar to Chance, which had been opened up and hoped that would not be a problem. She said she would support the motion.

Commissioner McKillop said she senses that they will miss the relationships on either side of the project. She emphasized how important it is for the neighborhood to keep those. She stated the City's intention of opening this up. She added that she did commend the neighbors for their relationships.

Commissioner Thnay discussed the 15 homes south and 16 north on Chance Street, noting that most in favor of the cut through live on the north. He commented that it is not a major connector to anywhere. He added that right now the street does not have a cul-de-sac design. In response to a neighbor's comment that emergency vehicles can just turn around in the driveways, he noted that they might not have access to turning if cars are in the drives. Having the cut-through will make it easier for neighbors to walk around.

Commissioner Halliday echoed what the others said, adding that she was sorry the homebuyers were misled. She said she too, lived on a similar street. It is cut all the way through but really there is not any more traffic. She commented on the issue of children congregating in cul-de-sacs. She commented that the City of Hayward needs to look for places for children to play in a neighborhood. Clearly Chance Street needs to be opened up.

Commissioner Bogue said he looked at the design and the layout of the street. It stops. It is not a cul-de-sac design. There is no curb at the end so it really was not designed to end, but to



continue. If this property had been developed before the northern part, there would be question about the street going through. He said it does not make sense for it to not go through. As it is there are no cul-de-sacs on the streets at all. It was incorrect for the developer to say it is a cul-de-sac.

Development Review Engineer Gaber said they had been talking with engineering and traffic staff who said they would be willing to monitor the street and see if traffic-calming devices are necessary.

Chairperson Bogue agreed it would be good for the neighbors to do that. He noted that not all emergency vehicle responses would be coming directly from the nearby fire station. They might be coming from somewhere else. They need the flexibility of a finished street to get there.

The motion passed unanimously.

2. Appeal of the Planning Director's Denial of Variance No. PL-2003-0093 - Ralph Willkom (Applicant/Owner) - Request for a Variance to Allow a Garage With a 15-Foot Setback Where a 20-Foot Setback is Required - The Project is Located at 25158 Soto Road at the Northeast Corner of Soto Road and Frederic Avenue

Assistant Planner Koonze made the presentation. He noted that the homes in this area were built in 1951. He commented that with the proposed garage being so large, staff is not supporting the proposal, because the plans for the garage can be reduced in size and constructed without a variance. He said the original garage was legally converted in 1981. He showed slides of the area and the proposal. He noted that the 15-foot driveways are not adequate to handle the size of the cars. Staff recommended a denial of the appeal since there are no special circumstances.

The public hearing opened at 8:23 p.m.

Ralph Willkom, applicant, said he was just asking for what everyone else on his block has. He said he wanted to build his garage so that it would match up with the setbacks in the rest of the neighborhood.

Commissioner Zermeno asked him what his response was to the staff comment that he scale back the size of the garage.

Mr. Willkom said he has a lot of tools and 2-cars. He said he needed the larger spaced garage. He then added that every house has a 15-foot drive-way on Frederick so granting the variance would be matching his lot with what all of the neighbors have.

Commissioner Zermeno suggested that if this application were approved, he would then need to get rid of the driveway in front of the converted garage.

Mr. Willkom said he could do that.

Kevin Thompson, a neighbor, said he just remodeled his own house and was required to have a 20-foot setback. He said it would not be fair to him to grant the variance. Besides, Mr. Willkom really lives on Soto Road, whereas the Thompson house is on Frederick. He added that Mr. Willkom would be backing his car out into the area on Frederick with the new garage and as a result, adding to the traffic on that street.

The public hearing was closed at 8:27 p.m.

Commissioner Halliday said the last gentleman made a good point. Since the neighbors driveways are grandfathered into the law. They are now legal nonconforming. She moved, seconded by Commissioner Sacks, to deny the appeal.

Commissioner Sacks commented that it was interesting to drive through the neighborhood. She said that she also was happy for the second speaker. She gave Mr. Willkom credit for legally converting his garage. She said she would not go against the current zoning. She then expressed her amazement at how many 15-foot driveways there are in the City.

Commissioner Zermeno said he would support the motion. He agreed that Mr. Willkom had gone through the channels for a garage conversion. He said he had to go along with the City rules in this instance.

Commissioner Thnay said he also agreed with the motion. The existing garages are non-conforming structures. He said there may have been times in the past when the City planners might have made mistakes. There are then times to try to fix these mistakes. He suggested a compromise on the setback with staff's suggestion.

Chairperson Bogue said driveways are required to be 20-feet. He noted that the 15-foot driveway is not designed for car parking, but parking inside the garage. He said it is necessary to have 20-feet to adequately park a car. He added that 20-feet is necessary.

The motion passed unanimously to deny the appeal.

3. Modification of UP 00-160-14 - Planning Director (Applicant) - Use Permit Application for the Construction of a 2,476 Square-Foot Restaurant with a Drive-Thru Window and the Appeal of Planning Director's Denial of PL-2002-0172 - By the Bay Investments (Applicant) - Use Permit Application to Allow Required Parking on an Adjacent Parcel - The Project is Located at 28000 Mission Boulevard at Webster Street (Big "O" Tires, Inc./Owners)



Principal Planner Patenaude described the property at Webster and Mission. He explained that in July, 2000, the Planning Commission approved a proposal for the whole property. Since then Autozone and the Big "O" applications were revoked due to inactivity. Carl's Jr.'s application is still active. He indicated that the applicant did not have the parking necessary for the size of their structure on their own. He commented that 15 spaces are available where 24 would be required. The Planning Director asked the restaurant to modify the Conditional Use Permit. The proposal has changed to a stand-alone on a single lot. He noted that original approval was with the expectation of the whole original design. There is no assurance that any future development would be in coordination with the design guidelines. He commented of the options for modification. The applicant could reduce the size of the building so less parking would be required, or obtain additional land for more parking. If it is not modified, additional parking should be provided with 9 spaces, otherwise there will be traffic impacts if they park on the street since there is a residential project nearby. Staff recommended upholding the administrative use permit denial to limit any potential problems. This would also be considered consistent with the plan since not modifying it would limit potential development of the property.

Commissioner Caveglia asked Assistant City Attorney Conneely whether she had received the legal document with the argument that they have a cross-easement agreement.

Assistant City Attorney Conneely responded that the Commission is looking at two issues: modifying the use permit, and what you do with the use permit. The cross-easement does not negate the concern for development as a whole on the property. The Commission has the authority to modify the use permit since circumstances have changed. To have coherent planning, the City can require all parking on-site.

Commissioner Halliday discussed the Auto Zone property and the new application for a hotel on that property.

Principal Planner Patenaude agreed that this might be a tight property for the use being proposed.

Commissioner Halliday then asked whether the staff was looking at proposals for each end of the property and not the middle.

Principal Planner Patenaude said the center parcel was for Big "O" which was the lynchpin for the parking for the property.

Commissioner McKillop asked whether by finding for this applicant would it then kill the other project proposal.

Principal Planner Patenaude said it would not if the commissioners were to modify the parking and size of this project.

Commissioner Thnay asked how staff determined the required parking space number and whether adjacent parking might not be adequate. He said they want to avoid too much pavement for parking.

Principal Planner Patenaude said staff allowed the other uses to spread the parking. Also, the Carl's Jr. site is smaller than required because it was designed with the others. So as a smaller site it was using parking with an adjacent parcel.

Commissioner Thnay said it looks like the recommendation not to have separate parking might jeopardize the integrity of the whole site.

Principal Planner Patenaude agreed that it might limit the potential development of the site for future use.

Commissioner Zermeño asked whether Big "O" owns the middle lot.

Principal Planner Patenaude stated that the applicant could give commissioners an update.

Commissioner Zermeño said it looks as though they would have a vacant lot between the businesses.

Principal Planner Patenaude suggested that the applicant consider working with Big "O" to acquire more property.

The public hearing opened at 8:45 p.m.

Woody DeMayo, applicant and property owner, said he has had numerous dealings with the staff. For the past 10 months he has asked for a hearing on his property. He has lost over \$150,000 since he has purchased it. He said he would like to address a few of the issues. La Quinta doesn't need any additional parking. He has followed all of the staff suggestions. He was told a Mission Architectural style was required. He was asked to reduce the size of the building. However, he has already reduced it to 900 square feet and would not be able to afford to build if it were any smaller. He wondered why staff had a problem whether he owned the adjacent land or was just using it. He said the plans show the numerous uses. There would be zero affect on the Big "O" lot since this would be the beginnings of a development. He said he purchased the property for a kick-start in that area.

Michael Di Geronimo, a Land-Use Attorney, discussed the revocation of the use permit and that the applicant gets a vested right. The City must prove that either he has not complied with conditions or there is a compelling public interest to deny the application. He then noted that a change of circumstances is not a compelling interest. The applicant submitted for a building permit in 2001. There is nothing in the use permit that says if the other projects did not go forward, his application was obsolete. That is not what was approved. Under the law, he met



the requirements of the use permit. Staff is saying that if he owned more the property, he could go forward. But he does. He has a permanent easement, which cannot be revoked. He has an absolute right to rely on it. It gives each party the right to move the parking around the parcel. He noted that Mr. DeMayo has tried everything to work this out. He has been relying on that approval. To require him to revoke or modify the agreement tells the community that the promise of staff and the Commission is worthless.

Commissioner Caveglia asked Assistant City Attorney Conneely to respond to the comment that modification tantamount to revoking and whether the City does have a right to revoke when the circumstances provide for this.

Assistant City Attorney Conneely said the easement is not tantamount to ownership. There are two different issues involved: Land-use issues as opposed to right issues. In reality this is not their property. Staff is suggesting to applicant acquire that land for a lot-line adjustment so that parking would be on their parcel.

Mr. Di Geronimo explained that the easement is the right to use. He noted that this would at least create some business on the site. Just because Big "O" and Auto zone do not go forward, Mr. DeMayo should not lose it. He has been going forward.

Commissioner McKillop asked what would be the grounds for revocation.

Assistant City Attorney Conneely responded that there are two types of revocations: the business never got started as with Big "O", and Autozone; and the second the business operates as a nuisance.

Mr. Di Geronimo pointed to condition number 10 in which the easement was already approved.

Commissioner Halliday commented that they did not get these conditions from the original approval.

Mr. Di Geronimo explained that it was a reciprocal arrangement, which provided for parking on each other's lot. He noted that this is fairly standard.

Robert Sauvagean, Architect for the project, discussed how the strip development would work. He clarified that there were separate use permits for each project. He said the only hurdle they have now is the parking problem, adding that there was nothing in the conditions that all three had to develop for each to proceed. He explained that they had been working in harmony with policy to push the buildings to the front and have parking to the rear. He stated that they have met the requirement. Standards need to be required of the other parcels. He emphasized that

they have the legal right to the 9-spaces on the other parcel. He said he did not know what would happen on the rest of the parcel but it is a viable parcel. He noted the reciprocal parking agreement adding that this is not a viable project with a reduction in size.

The public hearing was closed at 9:23 p.m.

Commissioner Thnay said he had mixed feelings about the issue since he is usually concerned about the overall integrity of a project. Staff mentioned that the lynchpin was Big "O" for approval of this area. The property would still be available to other development on this site, and is consistent with Mission-Garin Neighborhood Plan and with the General Plan. He added that there are not too many fast food restaurants in this area. It might spark a use for the rest of the site. He added that although the City requires 24 spaces, they do not really need it all. Generally retail parking needs vary throughout the lot. This has been deemed to be an acceptable use for this site.

Commissioner Sacks said she recalls looking at this as a package. Owners were together with the package. Now it no longer is. This appeal is trying to take the pieces apart and saying it is outside the package. Coherent planning is what we attempted in the first go-around.

Commissioner Zermeño said the Commission wanted to see the whole block developed at that site. However, he did sympathize with the owner. He has done everything he has been asked to do. There might be a hole on the property for a while, but possibly a developer might come in and see what is there.

Commissioner Caveglia stated that legally he was given a permit. He then moved, seconded by Commissioner Zermeño, to deny the modification and uphold the appeal. He added that he would direct staff to bring back conditions of approval.

Commissioner McKillop said it scared her that a businessperson can come in and do everything they are asked and then be denied permission to build.

Commissioner Halliday commented that it was initially a very unusual project. Staff and the Commissioner were trying to do something different. She said she would have liked to see all three go into the site as originally planned. However, a Hotel fits with a restaurant. She suggested the City of Hayward might get what it wants if this is approved. She said she was optimistic. She noted that this project does conform to existing conditions, so she too, would support the motion.

Planning Manager Anderly noted that although La Quinta has expressed interest in the parcel, it may or may not go forward.

Commissioner Sacks said she could not support the motion. She noted that coherent planning is the issue she feels strongly about. That this is just ending up with just one fast food restaurant bothers her a lot. She noted that the owner had put himself in the position of working with two other landlords, should have known their backing out was possible. Although the attorney suggested owner had a vested right, the right was based on conditions that no longer exist.



Chairperson Bogue noted the parking agreement on the south. He said he agreed with Commissioner Sacks. However, he said, when you look at the approval and what the owner has done, he has complied with everything the City has asked. This would not deny access to anyone else and he has not changed the intention of shared access. Although this is not coming out the way we hoped, this owner has complied with everything. He said they were seeing the problem of doing it this way and approving 3 permits that require cooperation. He added that he would support the motion since it is not for the Commission to punish the one owner who is following the rules.

Commissioner Zermeño asked whether the nine additional parking spaces would be landscaped.

Principal Planner Patenaude said, if approved, the layout and conditions would have to come back to the Commission.

Chairperson Bogue asked about the berming and landscaping.

Commissioner Halliday asked whether the Commission was approving what was in the drawings.

Principal Planner Patenaude said the plan was approved in 2000. The building permit is consistent with this. He noted that the only outstanding issue is with the parking.

The motion passed 6:1 with Commissioner Sacks voting "No."

4. Phase II, Grand Terrace, PL 2003-0114 - Pulte Homes Corporation (Applicant); Donald Clemerson (Owner)

- e. Use Permit - Request to raze two commercial/industrial structures and construct multi-family residential units within the Central City - Commercial (CC-C) Sub-district
- f. Site Plan Review - Regarding the design of project
- g. Exception - To allow a reduction in the garage width for one of two garage parking spaces

- h. Vesting Tentative Map Tract 7440 – Request to subdivide a 3.58-acre site into 74 lots for the development of 74 townhouses and one parcel for common open space

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(This item is to be continued to May 29, 2003)

ADDITIONAL MATTERS

5. Discussion of Topics to Include on the City of Hayward Web Site.

Commissioner Sacks suggested updates on projects approved throughout the City of Hayward as well as contact names and numbers for various items. She added that examples of stores with windows more than 25% covered might be shown as well as those who don't have such coverage.

Commissioner Zermeño said he would like to see examples of well pruned trees and badly pruned trees; well kept homes and badly kept homes; and home improvement information with guidelines and maps, more visual information about historically significant structures, bike paths, aerial photos with a key to individual homes in the area.

Commissioner Halliday suggested the Neighborhood Plans; General Plan and Zoning Ordinance information as well as all the photos, plans and drawings that are included in their packet per meeting.

Chairperson Bogue thought there might be more fire safety topics and tips available. He also suggested that the files be broken down smaller so they are easier to download, with the drawings separate since they use so much memory, like the break up of the Mission Garin Study and the General Plan.

Commissioner Thnay said there might be a section on "Frequently Asked Questions", links to aerial maps with property boundaries, and information on what things residents call the department about.

Commissioner McKillop suggested a hyperlink to each commissioner.

Commissioner Caveglia said he'd like to see questions and answers about specific things, as in who do you ask for information about potholes, the fee for keeping horses, etc.

6. Oral Report on Planning and Zoning Matters

Planning Manager Anderly discussed upcoming meetings as well as the next work session scheduled for May 29th.

Commissioner Sacks responded that she would be out of town on that day and could not attend.

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, May 8, 2003, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

7. Commissioners' Announcements, Referrals

There were no announcements or referrals.

APPROVAL OF MINUTES

- April 10, 2003 - Approved

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 9:59 p.m.

APPROVED:

Barbara Sacks, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary